XI. HOME RENTAL REHABILITATION PROGRAM

A. Introduction:

Under the State of Wisconsin HOME Homebuyer and Rehabilitation Program, funds may be used for rehabilitation costs of existing rental units. The maximum subsidy level is $24,999 per unit, with a maximum of 12 units (11 HOME-assisted) per project. New construction, conversions and major rehabilitation projects are funded under the State's HOME Rental Housing Development program.

The developers or owners of the rental housing assisted through the Rental Rehabilitation program may be small scale property owners, for-profit developers, nonprofit housing providers, CHDOs, a unit of local government, redevelopment organizations or public housing authorities.

B. Compliance:

Eligible Costs

Eligible expenses for rental property are the same as for the HHR activities.
Hard costs include:
- Rehabilitation costs: construction materials and labor.

Soft costs include:
- Credit reports;
- Appraisals;
- Architectural/engineering fees, including specifications and job progress inspections;

Maximum HOME Investment

The maximum per-unit subsidy limits apply to rental units.
For example, a six-unit structure will be rehabilitated with HOME funds. The maximum per-unit HOME subsidy for the area determined by HUD is $80,000. Thus, the HOME subsidy for this project **cannot exceed** $480,000 (6 x $80,000).

The actual subsidy provided will depend on the following factors:

- The proportion of the total project cost that is HOME-eligible—some planned project costs may not be eligible expenses under the HOME Program.
- How many of the units in the project are HOME-assisted—Projects may have a mix of HOME- and non-HOME-assisted units.
- The financial needs of the project. HOME projects may not receive more subsidy than is required to make them financially feasible. The HOME program allows the State and the subrecipient to determine what is required and reasonable.

Determining HOME-Assisted Units

Unlike other federal programs, such as CDBG and Rental Rehabilitation, the HOME Program distinguishes between the units in a project that have been assisted with HOME funds and those that have not. This distinction between HOME-assisted and unassisted units allows HOME funds to be spent on mixed-income projects while still targeting HOME dollars only to income-eligible households.)

The number of HOME-assisted units in a given project must be specified at project commitment. The HOME rules create a floor for the number of HOME-assisted units a project must have. This floor is based on the proportional share of total eligible costs to be paid with HOME funds. Some projects may consist of only HOME-assisted units.

Fixed and floating units: For properties with both assisted and non-assisted units, the program administrator must selects "fixed" or "floating" units at the time of project commitment.

- Fixed: When HOME-assisted units are "fixed," the specific units that are HOME-assisted are designated and never change.
- Floating: When HOME-assisted units are "floating," the units that are designated as HOME-assisted may change over time as long as the total number of HOME-assisted units in the project remains constant.
  If the floating designation is used, the owner must ensure that the HOME-assisted units remain comparable to the non-assisted units over the affordability period in terms of size, features and number of bedrooms.

Allocating Costs to the HOME-Assisted Units

Before determining the allowable HOME subsidy amount, the total HOME-eligible cost for the project must be established.

- For mixed projects with HOME-assisted and non-HOME-assisted units, the cost must be allocated across units.
- If both the assisted and non-assisted units are comparable in size, features and number of bedrooms, the HOME-eligible costs can be pro-rated across units. (Since floating units, by definition, must be comparable, costs should always be pro-rated.)
- If the assisted and non-assisted units are **not** comparable, the actual costs must be determined and allocated unit-by-unit. The specific units identified to "receive" HOME funds must be fixed—that is, designated as HOME-assisted.

Property Types and Locations

Eligible Property Types:

- HOME rental rehabilitation projects may be one or more buildings on a single site or multiple sites that are under common ownership, management and financing. The project must be assisted with HOME funds as a single undertaking. The project includes all activities associated with the site or building.

- HOME funds may be used to assist mixed-income projects but only HOME-eligible tenants may occupy HOME-assisted units.

- Transitional as well as permanent housing, including group homes and SROs, is allowed.

Ineligible Property Types:

- Properties previously financed with HOME during the affordability period cannot receive additional HOME assistance unless assistance is provided during the first year after project completion.

- HOME funds may not be used for operations or modernization of public housing projects financed under the Housing Act of 1937.

- Projects assisted under 24 CFR Part 248 (Prepayment of Low-Income Housing Mortgages) may not receive HOME funds, *unless* assistance is provided to "priority purchasers" of such housing.

Property Standards:

Rental properties must meet certain written standards:

- Housing that is being rehabilitated with HOME funds must meet all applicable state and local codes, rehabilitation standards and ordinances. It must also meet the International Building Code.

- All Assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

Owners must maintain properties in accordance with property standards throughout the affordability period. This will require periodic property inspections, as described in the section below.

Long-Term Affordability

Affordability Period:

- HOME-assisted rental units carry rent and occupancy restrictions for varying lengths of time, depending upon the average amount of HOME funds invested per unit:
  <$15,000/unit = 5 years
  $15,000 - $40,000/unit = 10 years
  >$40,000/unit = 15 years.

- HOME affordability periods are minimum requirements. Program administrators may establish longer terms of affordability for their programs.

- Affordability restrictions remain in force regardless of transfer of ownership.

Rent and Occupancy Requirements

- Rent and occupancy agreements must be enforced through covenants running with the property or deed restrictions.

- **Initial "HOME rents:"** Every HOME-assisted unit is subject to rent limits designed to help make rents affordable to low income households. These maximum rents are referred to as "HOME rents."

  HUD will annually publish fair market rents (FMRs) and calculations of rents affordable to families earning 65% and 50% of median so that owners and program administrators can establish new HOME rents for projects.

  Based on changes in area income levels or market conditions, HOME rents, as calculated by HUD annually, may increase or decrease.

- ✓ Tenants must be given at least 30 days written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements. For example, rents may not increase until the tenant's lease expires.

- ✓ HOME rents may decrease. While project rent levels are not required to decrease below the HOME rent limits in effect at the time of project commitment, decreasing HOME rents may reflect a change in Market conditions that may force owners to reduce rents in order to maintain tenants.

Basic steps for establishing maximum HOME rents

HUD publishes the High and Low HOME rents and the FMRs for each area annually. The numbers provided should be used to calculate project rents as shown below:

Anywhere MSA	**Eff.**	**1BR**	**2BR**	**3BR**	**4BR**	**5BR**	**6BR**
Fair Market Rent	459	472	586	845	869	999	1130
50% Rent	591	633	760	878	980	1081	1183
65% Rent	749	804	967	1109	1218	1324	1432

To calculate the High HOME Rent:

1. On the rent chart, find the FMR and follow this row over to the column that indicates the number of bedrooms in the unit.

2. On the rent chart, find the row labeled "65% Rent Limit" and follow it over to the column that indicates the number of bedrooms in the unit.

3. Determine which of the two rents (the FMR or the 65% Rent Limit) is **lower**. This is the High HOME Rent.

4. Subtract any tenant-paid utilities from the High HOME rent established in Step 3. This is the maximum actual rent that can be charged to the tenant.

To calculate the Low HOME Rent:

1. Follow the same steps as outlined above EXCEPT that the 50% Rent Limit Figures must be used instead of the 65% Rent Limit figures.

2. If a project receives federal or state project-based subsidies and the tenant pays no more than 30% of his/her adjusted income for rent, the maximum rent may be the rent allowable under the project-based subsidy program.

3. If the Low HOME Rent as calculated above is **higher** than the High HOME Rent, then the High HOME Rent must be used. This can occur when the High HOME Rent is equal to the FMR, and the FMR is lower than the Low HOME Rent.

New rents are effective upon receipt of the new HUD-published numbers. However, tenants' rents should not be adjusted until their leases are renewed.

Maximum allowable HOME rents and utility allowances

The maximum allowable HOME rents must be reduced if the tenant pays for utilities.

- ✓ The calculation of Section 8 FMRs includes all utilities and housing-related services, except telephone.
- ✓ HUD's calculation of high and low rents also includes utilities.
- ✓ In practice, many utilities—water, heat, air conditioning, fuel—are not included in rents and are paid by the tenant.
- ✓ Utility allowances provide a mechanism for reducing the maximum allowable HOME rents when some or all utilities are paid by the tenant.

The utility allowances prepared by the local public housing authority (PHA) may be used when adjusting rents.

Leasing mixed-income projects

When leasing mixed-income projects, owners/managers must assure that a sufficient number of units are leased or held available for lease to HOME eligible tenants in order to meet the low- and very-low-income targeting requirements of the program; and rents charged to tenants in the HOME units are within the High and Low HOME rent limits published by HUD.

THE APPLICANT/BENEFICIARY

Income Eligibility Requirements

Owners may not refuse to lease HOME-assisted units to a certificate or voucher holder under the section 8 Program, or to a holder of a comparable document evidencing participation in a HOME tenant-based rental assistance (TBRA) program, because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME TBRA document.

HOME rental housing has two constraints on occupancy:

1. The households assisted through the rental program must have incomes that do not exceed 60 % of the area median income.

2. In projects of five (5) or more HOME-assisted units, at least 20% of the HOME-assisted rental units must be occupied by families who have annual incomes that are 50% or less of median income. These very-low-income tenants must occupy units at or below the Low HOME Rent level.

   Projects with fewer than five (5) HOME-assisted units do not have to restrict any units to the Low HOME rents or limit occupancy to tenants at 50% or below of the area median income.

Determining and Verifying Income Eligibility of HOME Tenants

Initial Income Verification

Before the tenant occupies a unit, tenant eligibility must be documented with source documents, such as wage statements, interest statements and unemployment compensation statements. The Part 5 definition of annual (gross) income must be used to determine tenant eligibility.

Annual Recertification of Income

Because the HOME Program imposes occupancy restrictions over the length of the affordability period, owners must establish systems to recertify tenant income on an annual basis. Usually a tenant's income will be examined on the anniversary of the original income evaluation or at lease renewal. However, the owner may adopt an annual schedule and perform all verifications at the same time.

Recertification may be done by obtaining a written statement from the family indicating family size and annual income. This must include a certification from the family that the information is complete and accurate, and must indicate that source documents will be provided upon request.

- ✓ Owners of properties with affordability periods of 10 years or more are required to collect full source documentation of tenants every sixth (6) year of the affordability period.

- ✓ Owners of properties with affordability periods of less than 10 years that accept the tenant's statements and certification are not required to examine the income of tenants unless thee is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

<u>Increases in Tenant Income</u>

If tenant income changes occur during the affordability period, the project owner must take certain steps to maintain compliance with HOME rent and occupancy requirements.

- ✓ The project must maintain the correct number of High and Low HOME rent units.
- ✓ Rents must be adjusted for tenants whose incomes rise above 80% of the area median income.

Keeping the correct number of High and Low HOME rent units:

The owner should take the following steps to maintain the correct numbers of High and Low HOME rent units:

- ✓ If the income of a tenant occupying a Low HOME rent unit increases, but **does not exceed 80%** of county median income, that unit becomes a High HOME rent unit.
  To replace the Low HOME rent unit, the owner must rent the next available unit (for "floating" unit projects) or HOME-assisted unit (for "fixed unit projects) to a very-low-income tenant.
  Subject to the terms of the lease, the rent of the initial tenant whose income has increased may be increased to the High HOME rent for the unit. This process should not increase the number of assisted units.

- ✓ If a tenant's income **increases above 80%** of county median income, the unit this tenant occupies is still considered to be a HOME unit, but the tenant's rent must be adjusted.
  In projects where the HOME units float, the next available unit in the project of comparable size or larger must be rented to a HOME-eligible household. The unit occupied by the over-income tenant is no longer considered HOME-assisted, and the rent of that unit can be adjusted as appropriate.

Adjusting rents for over-income tenants in "fixed" unit projects: Over-income tenants (>80% CMI) in HOME-assisted fixed units must pay 30% of their adjusted income for rent and utilities. There is no rent cap for fixed units.

Adjusted rents for over-income tenants in "floating" unit projects: Over-income tenants in HOME-assisted floating units must pay 30% of their adjusted income for rent and utilities; however, the rent may not exceed the market rent for comparable, unassisted units in the neighborhood.

MONITORING AND INSPECTIONS

On-Site Inspections

In order to verify compliance with property standards and the information submitted by owners on tenants' incomes, rents and other HOME rental requirements during a project's period of affordability, HOME rules require on-site inspections of HOME properties according to the total number of units in a project as follows:

Number of Units	Inspection Required
1-4	Every 3 years
5-25	Every 2 years
26 or more	Annually

- ✓ Remember that the HOME property standards apply to the common areas and the building's exterior, not only the HOME units. Any deficiencies seen in these areas must be addressed.

Recordkeeping

HOME requires documentation for rental projects to show that all program regulations have been met. The subrecipients records should demonstrate compliance with the following requirements:

- Property standards: Records should show that a sufficient sample of HOME-assisted units were inspected, as well as exterior and common areas, and that any deficiencies identified were corrected.

- Rent and occupancy requirements: Inspection records should also show that the subrecipient examined a sample of unit files to verify that HOME rent and occupancy requirements were met.

- Lease requirements: Leases must meet HOME requirements.

- Tenant selection policies: In reviewing project files, the subrecipient should ensure the owner has adopted written tenant selection policies and criteria.

Property owner records: The owner is responsigle for keeping adequate records to be able to demonstrate compliance with HOME requirements. The owner should keep both project and tenant records.

Project records should include documentation to back-up rent andutility allowance calculations. If the project's HOME-assisted units are floating, the owner should also keep records to show how HOME occupancy target were met (for example, rental logs to show that as units were vacated or tenants became over-income, HOME-assisted units were properly replaced).

Tenant files should include the documentation necessary to demonstrate that each HOME-assisted unit is properly occupied by an income-eligible tenant. Such documentation includes: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease.

- ✓ Records must be kept for five years after project completion.
- ✓ Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period.

ATTACHMENT 1
RENT LIMITS

ATTACHMENT 2
LEASE PROVISIONS

The lease between the owner and the tenant in a HOME-assisted property must be for at least one year, unless by mutual agreement between the tenant and the owner. All leases must be written, signed, and dated documents.

The lease between the owner and tenant in a HOME-assisted property **can not** contain any of the following provisions:

- Agreement to be sued: Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- Treatment of property: Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.
- Excusing owner from responsibility: Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Waiver of notice: Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
- Waiver of legal proceedings: Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- Waiver of a jury trial: Agreement by the tenant to waive any right to a trial by jury.
- Waiver of right to appeal court decision: Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
- Tenant chargeable with cost of legal actions regardless of outcome: Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Owners may terminate tenancy or refuse to renew a lease only upon 30 days' written notice, and only for: serious or repeated violation of the terms and conditions of the lease; violation of applicable federal, state or local law; completion of the tenancy period for transitional housing or for other good cause.